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The Mystique of Secrecy

The Government's Attempt at Prior Restraint

By Erwin Knoll

In the Spring of 1979, the Federal Nuclear Regulatory Commission released to the press the transcripts of its frantic deliberations during the nuclear accident at Three Mile Island—a fascinating record of confusion, ineptitude, and downright deception. By far the most revealing line in those transcripts was a comment made by the Chairman of the Commission, Joseph M. Hendrie, who asked his fellow commissioners, "Which amendment is it that guarantees freedom of the press? Well, I'm against it."

By now, I hope, someone has told Commissioner Hendrie which amendment it is that guarantees freedom of the press. But I'm afraid he is by no means the only official of our Federal Government to share a devotion to secrecy and, if necessary, deception. My own experience with the Government's passion for secrecy began long before the notorious H-Bomb case in which The Progressive was involved last year.

About ten years ago, when I was working as a reporter in Washington, I wrote a few news stories about an exotic U.S. Navy scheme that was then called "Project Sanguine"—a plan to bury a huge underground radio grid in northern Wisconsin for the transmission of extremely-low-frequency signals to submarines at sea. Project Sanguine was controversial then and is still controversial now, though it has gone through a few cosmetic name changes; it was transformed first into Project Seafarer and, more recently and cutely, into Project ELF.

One day I received a call from a member of Senator Gaylord Nelson's staff. "Come on over," he said. "We've got something interesting to show you." I went over and he showed me: Nelson had requested a look at the Navy's file on Project Sanguine, and in that file were clippings of my published news stories. Each had officially been stamped "SECRET."

I thought at the time that this was the most bizarre example of the Government's obsession with secrecy I would ever encounter. I was mistaken.

From March 9, 1979, when Federal District Judge Robert W. Warren of Milwaukee issued, at the Government's request, a temporary restraining order (which became a preliminary injunction on March 26), until September 28, 1979, when that injunction was lifted by the Seventh Circuit Court of Appeals in Chicago, the editors of The Progressive and a freelance writer named Howard Morland were the first and only journalists in American history to be subjected to a prior restraint injunction on "national security" grounds.

The article we were enjoined from "publishing or otherwise communicating or disclosing in any manner" was one Morland compiled from published materials available in almost any library; from a tour of nuclear weapons facilities arranged for him by the U.S. Department of Energy; and from interviews

he conducted as a reporter receiving on-the-record information. It was, in other words, an article that could be replicated by any other enterprising reporter—or by anyone else willing to do some competent research.

Yet the Government insisted that Morland's article contained "secrets" which would, if published, injure the United States. And Judge Warren, undoubtedly impressed by sworn affidavits submitted by such luminaries as the Secretaries of State, Defense, and Energy, abrogated a two-centuries-old tradition against prior restraint.

The statute under which we were muzzled is the Atomic Energy Act of 1954, which declares:

"The term 'Restricted Data' means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear materials; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category...."

Two things are worth noting about that provision: First, it applies to nuclear energy as well as nuclear weaponry, and could presumably be invoked to keep us from knowing details of the next catastrophic nuclear accident that is sure to happen sooner or later. Second, the Government has construed that language of the act to encompass all data, whether or not they originate with the Government.

It is important to understand that in compiling his article for The Progressive Howard Morland never saw a classified document—and I have seen none since I examined those clippings of my own news stories in the Navy's folder on Project Sanguine. But the Government contends that under the Atomic Energy Act, all nuclear information that has not been specifically declassified is "data restricted at birth"—that is, classified as soon as it comes into being, even if it originates in a citizen's own mind.

What we have, in other words, is an Official Secrets Act—and an incredibly broad and sweeping one—that has gone unchallenged for a quarter of a century. Whether that fact alone suggests a certain lack of diligence on the part of the press and other guardians of the First Amendment is a question that should be pondered by all of us.

As long ago as 1958, the House Committee on Astronautics and Space Exploration cited the Atomic Energy Act as an example of "official vigilance ... carried to dangerous extremes," and added: "However well intentioned, however loosely or intelligently enforced, such a law is a latent danger to the life of this democracy." In The Progressive's case, that "latent danger" was transformed into an open and overt attack on our First Amendment rights. And when I say our First Amendment rights, I don't mean ours at The Progressive or ours in the press. I mean the First Amendment rights of every American.

Before it went to court last year to muzzle The Progressive, the Government of the United States had mounted only one previous effort to impose a prior restraint on publication on grounds of so-called national security. That was the 1971 Pentagon Papers case, directed at two of America's great newspapers, The New York Times and The Washington Post, and it was swiftly and decisively rebuffed by the courts.

In that case, the Government told the courts that if the Pentagon Papers were published, catastrophic consequences would ensue: thousands of American soldiers in Vietnam would lose their lives; prisoners of war would be executed; CIA agents around the world would be murdered; U.S. alliances would be disrupted. It is always easy to find—or invent—rationalizations for secrecy.

The judge in The Washington Post case asked the Government to submit in camera a list of the ten most damaging disclosures in the Pentagon Papers—the ten facts which, if published, would do the greatest harm. The Government complied and submitted such a list. It has only become available in the last three or four years under a Freedom of Information request. It turned out that every one of those ten calamitous disclosures had previously been published.

Bill of Rights

Congress of the United States
begun and held at the City of New York
Wednesday, the fourth of March, one thousand seven hundred and eighty seven

SECRET

Ken Packi
THE MADISON PRESS CONNECTION

Thomas Jefferson
The President of the United States, and President of the Senate.

Ken Packi, The Madison Press Connection

An incident back in 1950, involving Scientific American magazine, is even more relevant to our recent experience at The Progressive. Scientific American was on the press with an article about the hydrogen bomb by nuclear scientist Hans Bethe when the Atomic Energy Commission stepped in, stopped the presses, destroyed several thousand magazines that had already been printed, demolished the plates, and refused to let the magazine go back to press unless it deleted four passages from Bethe's article. Gerard Piel, who was the publisher of Scientific American then and is still the publisher today, has written and talked about this episode. He makes the point that three of the four passages that the Government ordered deleted from Bethe's article had previously been published in Scientific American. But the fourth was even more interesting: It was a piece of deliberate misinformation—or, as the CIA likes to say, disinformation—which Bethe had deliberately inserted into the article in order to throw the Russians off the track. Because it is common in the bureaucracy for the left hand not to know what the right hand is doing, that passage, too, was ordered deleted from the article.

It seems absurd, of course—just as it seems absurd that the Government went to court to suppress Howard Morland's article for The Progressive, though it was later forced to admit that the technical information it had tried to suppress in that article had been declassified years ago and made available on public library shelves. But there is a method to the Government's madness.

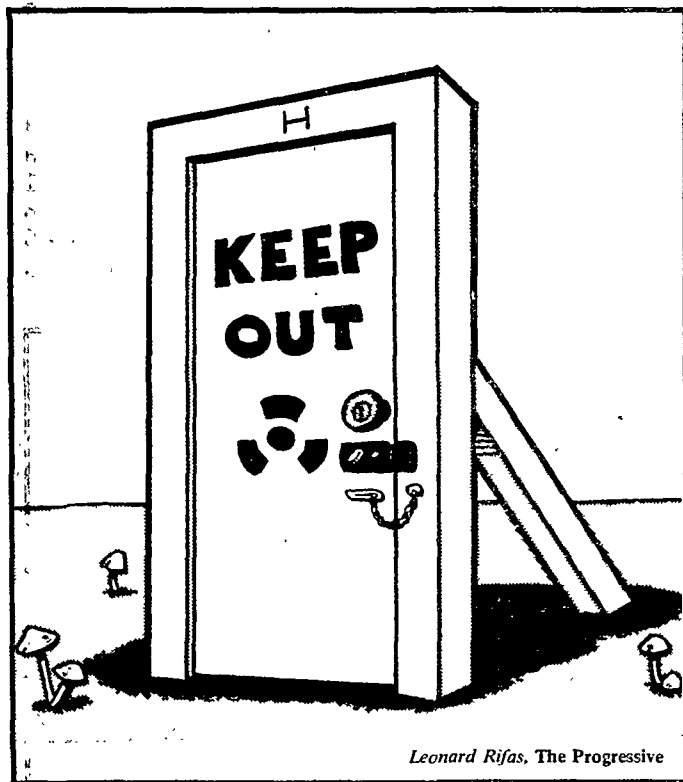
In 1950, when Scientific American's presses were stopped, President Truman had secretly made the decision to go ahead with development of the hydrogen bomb. That decision was a very controversial one; the Government's own scientists were deeply divided on the issue. So when Truman decided to proceed, he issued an order to the Atomic Energy Commission directing it to suppress, wherever possible, public discussion, debate, and controversy over the H-bomb. In its zeal to comply with that executive order, the AEC stopped the presses at Scientific American.

Exactly the same rationale applied to the Government's assault on the First Amendment in The Progressive's case. For a third of a century now, our Government's nuclear policies have been shrouded in secrecy and screened from public knowledge, discussion, and debate.

We were finally able to publish Howard Morland's article in the November 1979 issue of The Progressive. Every reader can now see that it is not a "blueprint" for construction of a hydrogen bomb. It is not an article that could be used by anyone intending to build a hydrogen bomb. That kind of an article, as the publisher of Scientific American has pointed out, would entail publishing carloads of blueprints and computer printouts. The hydrogen bomb is not a device that can be built in your basement.

It is not something that can be built by terrorists or by organized crime or by some lunatic despot in a struggling, underdeveloped nation. It is a device that requires a huge, sophisticated, and enormously expensive industrial complex, and that can therefore be built only by a very large government. That is why only five very large governments have built it—the United States, the Soviet Union, China, Britain, and France.

Some have commented with reference to The Progressive's First Amendment case that they would not want "an irresponsible government" to be able to build a hydrogen bomb. Obviously, neither would we. But the sad fact is that five irresponsible governments have already built hydrogen bombs—and the irresponsible government of the United States has stockpiled some 30,000 of them, enough to destroy the world many times over. No one but an irresponsible government would build such a monstrous machine.



Howard Morland's article is about nuclear secrecy. We asked him, in the summer of 1978, to take a hard look at the secrecy in which the U.S. nuclear program has been shrouded for more than thirty years. We suspected—and his article more than confirmed our suspicion—that the mystique of secrecy was being invoked to deny Americans information to which they were entitled—information they needed to have if they were to exercise their responsibilities as citizens making informed decisions on public issues which are literally matters of life and death.

Here are a couple of examples of the uses and abuses of nuclear secrecy: In Honolulu, the United States Navy has recently completed the construction

of underground storage bunkers—"igloos," they are called—in which it plans to store up to 1,200 nuclear warheads. The facility is located a mile and a half from the main runway at Honolulu International Airport. There are some citizens in Honolulu who are a bit upset about that, and who decided that the Navy ought to be required to file an environmental impact statement discussing the possible consequences of an airliner crashing into those igloos. The Government sent a classification expert to Honolulu to testify that no environmental impact statement could be filed, and no information could be provided, because to do so would entail a breach of national security. A Federal Judge in Honolulu upheld that assertion, and when he was recently reversed by the Court of Appeals, it ruled that only individuals cleared for access to "secret" information would be able to see the Navy's environmental impact statement.

Another example: In the fall of 1978, at Howard Morland's request, Representative Ronald V. Dellums of California wrote a letter to the Department of Energy in which he asked a series of questions focusing on a significant increase in the Government's procurement of plutonium. Dellums asked whether more bombs were being produced, or whether bombs were being produced that required more plutonium, or whether perhaps the neutron bomb required production of additional plutonium. He received a reply from the Secretary of Energy advising him that his questions were classified—not the answers, but the questions. It seemed to us that if the time had come in America when a citizen—indeed, a member of Congress—could not even ask questions without having them classified, we were in a great deal of trouble.

Morland discovered very quickly that the so-called secrets on which such absurd abuses of the democratic process were based were not secrets at all—that they were available to thousands of scientists, here and abroad; that they could be readily ascertained by any competent researcher; but that they served as a handy-dandy all-purpose rationale for withholding vital information from Americans.

It is a situation reminiscent of the U.S. bombing of Cambodia in the late 1960s. That was a "secret," too. It wasn't a secret, of course, from the people being bombed, or from the Vietnamese, or from the Russians, or from the Chinese. It was merely a secret from the American people, and it kept them from effectively challenging the ruinous course being pursued by their government. That is exactly the purpose served by the secrecy in which the Government has enveloped its nuclear programs.

In 1643, the British Parliament enacted a law conferring on a Committee of Examinations the power "to regulate printing: that no book, pamphlet, or paper shall be henceforth printed, unless the same be

first approved and licensed by such, or at least one of such, as shall be thereto appointed." It was against that law that John Milton directed his famous *Areopagitica*. "Henceforth," he wrote, "let no man care to learn, or care to be more than worldly wise; for certainly in higher matters to be ignorant and slothful, to be a common steadfast dunce, will be the only pleasant life and only in request."

What we learned last year is that the Government of the United States is convinced it must keep the people of this nation ignorant and slothful so that they can lead the only pleasant life while the world marches toward nuclear Armageddon.

But we also learned that the spirit of freedom still flourishes in our country—even after three decades of Cold War, witchhunts, and obsession with a kind of "national security" that seems to grow more elusive the more relentlessly it is pursued.

We learned, to be sure, that freedom has many fair-weather friends. But we also learned that it has devoted and unwavering defenders. Among them are citizens who had never heard of *The Progressive*, did not share its political perspectives, did not care about the nuclear issues involved in our struggle, but were simply outraged by the very idea of censorship.

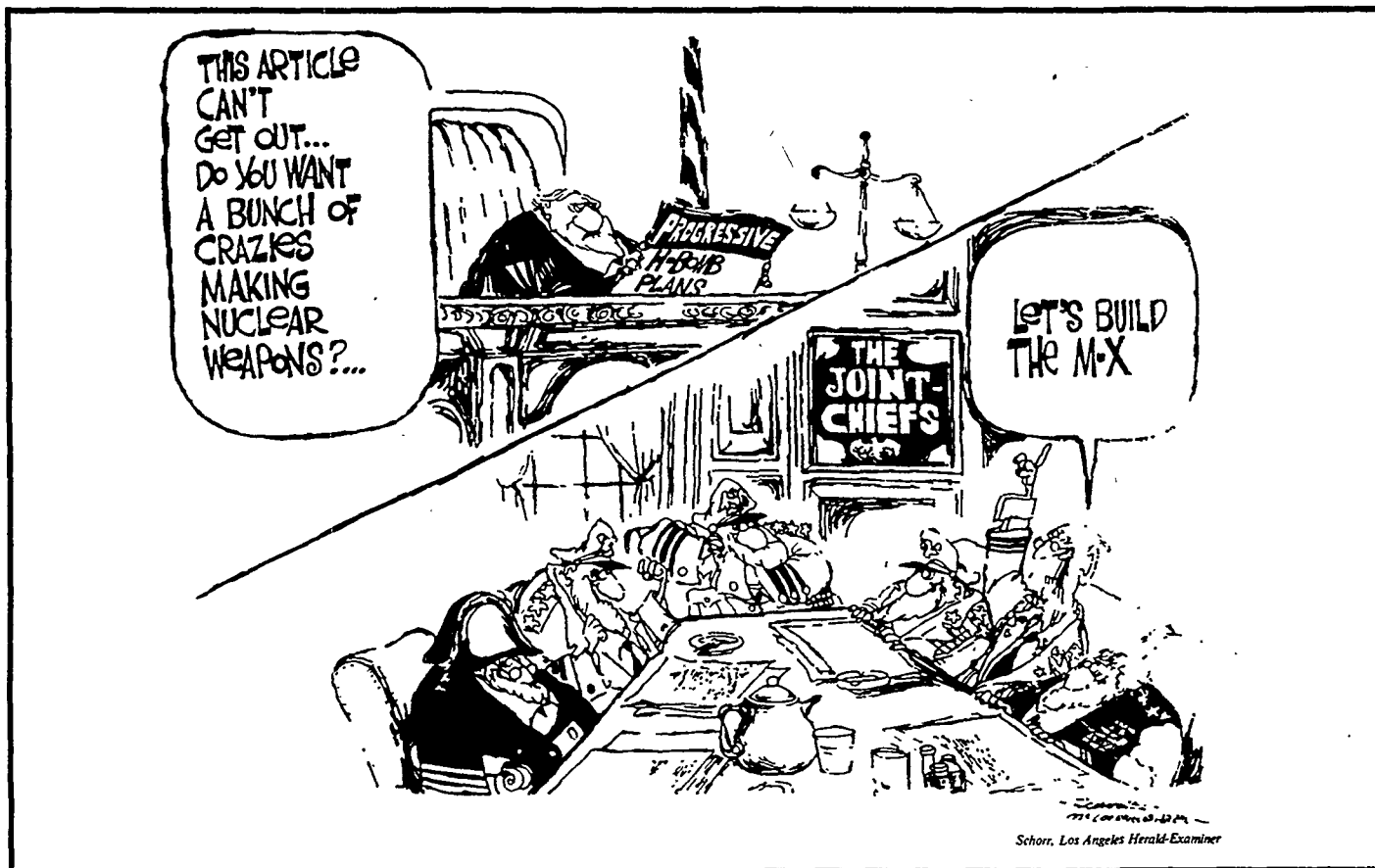
We learned, to be sure, that a Federal judge would violate 200 years of legal precedents against prior restraint. But we also learned that we could receive a fair and full hearing in the appellate

courts, and that we could muster a formidable array of legal talent in our behalf and in behalf of the First Amendment. We believe we would have won the right to publish Howard Morland's article in the courts if the Government had not aborted the case by moving to vacate the injunction. We believe that is why the Government moved to vacate the injunction.

We learned, to be sure, that the costs of defending freedom can be astronomic, and could easily destroy a publication like *The Progressive*. But we also learned that among our readers and outside our readership there are people willing to help defray those costs. We have found some of those people, and we hope to find the others whose help we need as we continue to pay legal costs that reached almost \$250,000.

We learned, most significantly, that our country still provides the promise of freedom—and that the promise grows stronger when it is put to the test.

For more information, see the May 1979 and November 1979 issues of *The Progressive*. Howard Morland's article is in the latter. The judicial opinions are reported at 467 F. Supp. 990 (injunction issued), 610 F. 2d 819 (injunction dismissed) and 486 F. Supp. 5 (defendants' motion for reconsideration denied).



Schorr, Los Angeles Herald-Examiner